IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3275 OF 1990
IN
SUIT NO.3639 OF 1990

Purshottam Odhavji Solanki .. Plaintiff.
V/s.
Sheela Bhatt, Editor, Abhiyan
& Others .. Defendants.

Ms.Pradnya Matkar i/b. R.M. Parekh for the plaintiff.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 7TH MARCH, 2006.

P.C. :

Ms.Pradnya Matkar, advocate appears for Mr.R.M. Parekh, advocate for the plaintiff and submits that Mr.R.M. Parekh has sought his discharge in the matter by lodging Chamber Summons No.331 of 2006. She submits that she has no instructions in the matter.

2. Purshottam Odhavji Solanki (Plaintiff) filed a suit for damages in the sum of Rs.25,00,000/- against the Editor, Special Correspondent, Publishers and Printers of the magazine Abhiyaan for having published a defamatory article against him. In the suit, the plaintiff took out a notice of motion that was registered as Notice of Motion No.3275 of 1990. On 3rd December, 1990, the learned Motion Judge granted ad-interim order in terms of prayer (a), as the defendant Nos.1 to 5 could not justify the

publication of the article.

3. On 7th February, 1991, the learned Motion Judge passed the following order :

> "Coram : Choudhari, J.
> Dated : 7-2-91.
>
> Mr.Ghag for defendants 1,3 and 4.
> Miss N.Sharma for defendant No.6.
>
> Notice given to plaintiffs advocate but absent.
>
> P.C. :
>
> In the light of observations of the Division Bench contained in order dt.20-12-90 an Appeal Lodg.No.1644/90 and having regard to the question involved it appears to me that the matter can be move advantageously heard by the Division Bench. I accordingly report the matter to the learned Chief Justice under Rule 28 of the (O.S.) rules of this court.
>
> The papers and proceedings of the respondents be placed before the learned Chief Justice for suitable directions."

4. Thereafter, the notice of motion as well as the appeal were posted before the Division Bench. In so far as the notice of motion No.3275 of 1990 in suit is concerned, the Division Bench passed the following order.

> "Coram : P.D. Desai C.J. & S.C. Pratap J.
> Wednesday, 6th March, 1991.
>
> P.C. :
>
> Ad-interim relief staying the operation and implementation of the order under appeal subject to the condition that any intended publication in the journal in question in respect of the Plaintiff will be first placed for the perusal of the Court and the publication will be made only if the

Court permits the same being done.

2. Adjourned for four weeks."

5. As regards the appeal, the Division Bench held that the appeal does not survive in view of the order passed in the notice of motion. The appeal was disposed of on 6th March, 1991 by the following order :

"Coram : P.D. Desai C.J. & S.C. Pratap J.
Wednesday, 6th March, 1991.

P.C. :

. In view of the order passed in Notice of Motion No.3275 of 1990, out of which the Appeal arises, the Appeal itself does not survive and the same is disposed of accordingly."

6. It appears that the notice of motion remained pending and it came up for hearing before the learned Motion Judge on 26th August, 2005. Though none was present, the learned Motion Judge passed the following order :

"Coram : S.U. KAMDAR, J.
Date : 26th August, 2005.

P.C. :

. The order passed at ad-interim stage was carried in appeal before the Division Bench in Appeal Lodging No.1644 of 1990 and the Division Bench by its order dated 28.12.1990 was of the opinion that appeal raises an important issue and therefore should be disposed of by learned Single Judge in the pending notice of motion. By subsequent order passed by the learned Single Judge on 7.2.1991, the motion was to be heard by the Division Bench. However, no further hearing has taken place. In the aforesaid

> circumstances, I direct the office to place the matter before the Hon'ble Chief Justice along with the said orders dated 28.12.1990 and 7.2.1991 for appropriate direct. Office states that record and proceedings is not available. Mr.Shroff advocate for the defendants assures that he will file the copy of the record within a period of one week from today. Office is directed to obtain necessary directions from the Hon'ble the Chief Justice. Mr.Shroff also states that he desires to take discharge from the matter. He can do so in accordance with law."

This is how the notice of motion has been posted before us.

7. As already indicated above in so far as the appeal is concerned, that came to be dismissed by the Division Bench on 6th March, 1991. As regards the order passed by the Division Bench on the notice of motion on 6th March, 1991, the same has to be discharged. None appears for the defendants and the advocate appearing for the plaintiff states that Mr.R.M. Parekh, advocate on record for the plaintiff has sought his discharge as he has not received any instructions from the plaintiffs.

8. We, accordingly, discharge the order dated 6th March, 1991 passed by the Division Bench as well as the order dated 3rd December, 1990 passed by the learned Single Judge.

9. The notice of motion is disposed of accordingly.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)